

ADVANCED INTERNET TECHNOLOGIES,  
INC.,

 $\mathbf{v}_i$ 

Defendants.

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to documents submitted to the court with summary judgment briefing warranted strict First Amendment scrutiny, was predicated on the principle that submitting documents to the court for consideration as part of a dispositive motion was no different than offering them as trial evidence. The Court held: “Because summary judgment adjudicates substantive rights and serves as a substitute for trial, we fail to see the difference between a trial and the situation before us now.” *Id.* at 252. Certainly, *a fortiori*, when a matter does move past summary judgment and actually goes to trial, any decision to seal documents submitted to the Court as evidence or exhibits at trial warrants full First Amendment analysis, as well.

Thus, to the degree one or more of the parties plan to seek an order of the Court sealing documents submitted at trial, the very same interests the Times asserted in its Motion to Intervene and Proposed Opposition—“asserting and protecting its and the people’s right of access to judicial documents, as conferred by the First Amendment to the Constitution of the United States and the common law”—will apply. ([Dkt. # 289](#) at 1.) In short, the public’s constitutional right of access to trial documents cannot be limited to the summary judgment phase of proceedings, and the Times asks that the Court reject any attempt by Dell or DFS to impose such a limit.

### **CONCLUSION**

For the reasons explained above and in its Motion to Intervene, the Times respectfully requests that this Court enter an Order: (1) granting the Times’ Motion to Intervene under Rule 24(a) of the Federal Rules of Civil Procedure, or in the alternative; (2) granting the Times’ Motion to Intervene under Rule 24(b).

Respectfully submitted, this the 10th day of August 2010.

/s/ Eric M. David

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This the 10th day of August 2010.

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